

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WOONSOCKET

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:
:
:
:

v.

C.A. No. M17-0001
07412020306

STEPHANIE MELLO

DECISION

PER CURIAM: Before this Panel on March 8, 2017—Magistrate Kruse Weller (Chair), Magistrate DiSandro, III, and Magistrate Goulart, sitting—is Stephanie Mello’s (Appellant) appeal from the decision of Judge Thomas Dickinson (Trial Judge) of the City of Woonsocket Municipal Court, sustaining Appellant’s charged violation of G.L. 1956 § 31-18-5, “Crossing other than at crosswalks.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On October 29, 2016, Officer Michael Velino (Officer Velino) of the Woonsocket Police Department responded to a reported accident at the intersection of Rathbun Street, Cumberland Street, and Social Street in Woonsocket. (Tr. at 3-4.) On that day, after his investigation, Officer Velino issued Appellant the above mentioned citation. *Id.* at 6. On February 9, 2017, Appellant appeared before the Woonsocket Municipal Court for her trial on the charged violation. *Id.* at 1.

At trial, Officer Velino testified that on October 29, 2016, he responded to the location of the accident. *Id.* at 3-4. Officer Velino explained that the accident occurred at a three-way intersection where Cumberland Street and Rathbun Street intersect with Social Street, which is a

one-way road. *Id.* At that intersection, there are three traffic control devices and three marked pedestrian crosswalks. *Id.* Officer Velino indicated that there is no crosswalk where Cumberland Street intersects with Social Street. *Id.*

Officer Velino stated that when he arrived on scene, he observed that a vehicle had struck Appellant, a pedestrian. *Id.* at 4. He first made contact with Appellant, who had moved to the side of the road after being struck by the vehicle. *Id.* Officer Velino went on to state that Appellant was complaining of general pain and, shortly thereafter, she was taken by rescue personnel for medical attention. *Id.* He then spoke with the operator of the vehicle involved in the accident, and a witness who saw the accident occur. *Id.* at 4-5. Officer Velino stated that based on his investigation, he “issued a citation to [Appellant] for failure to yield the right of way, where there’s no crosswalk, by entering the intersection.” *Id.* at 5.

Next, the Trial Judge heard testimony from Keagan Palardy (Palardy), the operator of the vehicle that struck Appellant. *Id.* at 7. Palardy testified that she was travelling on Social Street and stopped at a red light at the intersection. *Id.* After the light turned green and she began taking a left turn onto Cumberland Street, she noticed that Appellant was in the road. *Id.* at 7, 9. Palardy explained that when she saw Appellant, she applied her brakes but the driver’s side of her vehicle “bumped into [Appellant’s] right leg.” *Id.* at 8.

On cross-examination, Palardy testified that she “probably” had her directional on the entire time she waited at the red light but that she could not specifically remember. *Id.* Palardy also stated that she could not recall in which lane she struck Appellant. *Id.* at 9. She specified by stating that she “hit the brakes and [] bumped into [Appellant’s] leg with the driver’s side front corner.” *Id.* at 10. Palardy further testified that she did not see Appellant before turning: “I

just saw my light [turn] green, and I know that area, so I just know that people don't normally cross over there." *Id.* at 10-11.

Janine Dion, an uninterested witness, also testified at Appellant's trial. *Id.* at 12. Dion provided that she was stopped at the red light on Rathbun Street headed toward Cumberland Street when the accident occurred. *Id.* at 12. While stopped at the red light, she observed Appellant walking "very, very quickly." *Id.* Dion then briefly looked away and when she looked back, she "saw [Appellant] in an 'L' position and then [fall] to the ground." *Id.* Dion added that she did not see the impact but that she did see Appellant was struck while crossing the first of the two lanes on Cumberland Street. *Id.* at 13.

The final witness to testify was Appellant. *Id.* at 14. Appellant briefly testified that she was "almost on the yellow line in the middle of the street" when she was struck by Palardy's vehicle. *Id.* at 15.

After hearing the testimony, the Trial Judge stated his findings of fact on the record. *Id.* at 16. He first noted that it was not the court's responsibility "to adjudicate the relative fault of the parties, either the operator of the vehicle or the pedestrian in connection with the accident." *Id.* at 17. The Trial Judge then stated that "based on the evidence presented, the testimony of the witnesses, particularly of [] Officer [Velino] and the uninvolved witness [Dion], I do find that [Appellant] was crossing the street other than at a crosswalk." *Id.* The Trial Judge further indicated that "[t]he place where she was crossing was not a place where there was a crosswalk." *Id.* He added that he "[thought] that [was] the City's only burden." *Id.* The Trial Judge then upheld the violation. *Id.*

Thereafter, Appellant filed a timely appeal. Forthwith is this Panel's decision.

II

Standard of Review

Pursuant to § 31-41.1-8 of our General Laws, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record

or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

The Appellant argues that the Trial Judge’s decision to uphold the violation is “[i]n violation of . . . statutory provisions,” “affected by other error of law,” and is “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 31-41.1-8(f). Specifically, Appellant contends (1) that she did not have a duty to yield the right of way before crossing the roadway and (2) that the Trial Judge failed to make any findings of fact regarding whether Appellant had a duty to yield the right of way before crossing the roadway and whether Appellant breached that duty.

Section 31-18-5 states, “[e]very pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.” The Appellant argues that the record indicates Palardy was not travelling on Cumberland Street at the time Appellant began to cross the roadway; therefore, Appellant did not have a duty to yield the right of way. During oral argument, Appellant relied on the argument that she was not bound by a duty to yield the right of way to Palardy since Palardy turned off Social Street onto Cumberland Street—the roadway that Appellant was crossing—after Appellant began to cross. The Appellant asserts that she only owed a duty to yield the right of way to those vehicles traveling on Cumberland Street and not to every vehicle travelling on any intersecting roadway.

Our Supreme Court has stated that any judge sitting as a factfinder must make findings of fact so that a reviewing court may “pass upon the appropriateness of the order and the grounds

upon which it rests.” *Now Courier, LLC v. Better Carrier Corp.*, 965 A.2d 429, 434 (R.I. 2009) (quoting *Chiaradio v. Falck*, 794 A.2d 494, 496 (R.I. 2002)). A trial judge’s findings “must contain, at the very minimum, a factual finding and a conclusion of law on each cause of action adjudicated.” *Cathay Cathay, Inc. v. Vindalu, LLC*, 136 A.3d 1113, 1119 (R.I. 2016) (citing *Cathay Cathay, Inc. v. Vindalu, LLC*, 962 A.2d 740, 747-48 (R.I. 2009)).

Pursuant to § 31-18-5, the Trial Judge must have found by clear and convincing evidence that Appellant was a pedestrian, walking in an area other than a marked or unmarked crosswalk at an intersection, and that Appellant failed to “yield the right-of-way to all vehicles upon the roadway.” Sec. 31-18-5. According to the record, the Trial Judge stated: “I do find that [Appellant] was crossing the street other than at a crosswalk. The place where [Appellant] was crossing was not a place where there was a crosswalk. I think that’s the City’s only burden, and therefore, after trial I do find her guilty of the charge.” (Tr. at 17.) The Trial Judge, however, made no mention of whether he found that Appellant failed to “yield the right-of-way to all vehicles upon the roadway.” Sec. 31-18-5.

Without any indication of the Trial Judge’s findings with respect to that element of the offense, it is impossible for this Panel to “pass upon the appropriateness of the order and the grounds upon which it rests.” *Now Courier, LLC*, 965 A.2d at 434.

Additionally, the record contains no evidence regarding whether Appellant did in fact fail to yield the right of way. The Rhode Island Supreme Court has held that “[i]t is the duty of a pedestrian to look both ways before leaving a sidewalk and walking into the street.” *Cunningham v. Walsh*, 53 R.I. 23, 163 A. 223, 225 (1932). Here, there is no evidence within the record detailing any actions taken by Appellant to discern whether she had a duty to yield the right of

way prior to entering the roadway, such as looking both ways.¹ *Id.* Without any such evidence, the Trial Judge would be unable to conclude whether Appellant breached her duty to yield the right of way.

Therefore, based on the fact that there is no “factual finding” or “conclusion of law” regarding Appellant’s alleged failure to yield the right of way to any oncoming vehicles this Panel finds that the Trial Judge’s decision is clearly erroneous. *See*. § 31-18-5; *Cathay Cathay, Inc.*, 136 A.3d at 1119. Due to the lack of the required findings of fact, the appeal is granted, and the violation is dismissed.

¹ During oral argument, Appellant asserted that there were no vehicles traveling on Cumberland Street at the time she began to cross the intersection; therefore, she had no duty yield. In consideration of the fact that this Panel’s authority “is confined to a reading of the record,” Appellant’s assertion regarding the location of Palardy’s vehicle at the time she began crossing the road cannot be considered. *See Link*, 633 A.2d at 1348 (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

Magistrate Erika Kruse Weller (Chair)

Magistrate Domenic A. DiSandro III

Magistrate Alan R. Goulart

DATE: _____